

ORDINANCE NO. _____

AN ORDINANCE OF THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AMENDING CHAPTER 82 OF THE CODE OF THE CITY OF MIAMI BEACH, ENTITLED "PUBLIC PROPERTY," BY AMENDING ARTICLE IV, ENTITLED "USES IN PUBLIC RIGHTS-OF-WAY," BY AMENDING DIVISION 5, ENTITLED "SIDEWALK CAFES," BY AMENDING SUBDIVISION II, ENTITLED "PERMIT," BY AMENDING SECTION 82-385, ENTITLED "MINIMUM STANDARDS, CRITERIA, AND CONDITIONS FOR OPERATION OF SIDEWALK CAFES," BY MODIFYING THE CIRCUMSTANCES UNDER WHICH SUBSECTION (Z), RELATING TO SINGLE-USE CARRY OUT PLASTIC BAGS, WOULD TAKE EFFECT; PROVIDING FOR REPEALER, SEVERABILITY, CODIFICATION, AND AN EFFECTIVE DATE.

WHEREAS, the City of Miami Beach ("City"), a world-renowned tourist destination, declares that it is in the interest of the public health, safety, and welfare of its residents and visitors to reduce litter and pollutants on the lands and in the waters of the City, and along its shores and famous beaches; and

WHEREAS, the City is comprised of a number of islands with approximately 70 miles of shoreline along numerous canals and waterways, the Atlantic Ocean, and the Biscayne Bay Aquatic Preserve, all of which support a wide variety of flora and fauna; and

WHEREAS, the waters surrounding the City support threatened and endangered species such as the West Indian manatee and Johnson's seagrass; and

WHEREAS, the City's beaches are a designated nesting habitat for the protected loggerhead, green, and leatherback sea turtles, and support shorebird species, including royal terns and seagulls; and

WHEREAS, single-use carry out plastic bags are neither readily recyclable nor biodegradable, and take hundreds to thousands of years to degrade in the environment; and

WHEREAS, the distribution of single-use carry out plastic bags by businesses to consumers and patrons for use in carrying purchased goods has a detrimental effect on the environment of the City, County, and State; and

WHEREAS, discarded single-use carry out plastic bags contribute to overburdened landfills, threaten wildlife and marine life, and degrade and litter drainage and sewage systems, as well as the beaches and waters off the Florida coast, which include areas within the City; and

WHEREAS, single-use carry out plastic bags are photo-biodegradable and break down into smaller pieces which can make their way into the food chain via such animals as jellyfish and endangered sea turtles; and

WHEREAS, plastic bags constitute a portion of the litter in the City's streets, parks, public places, stormwater management system, and waterways; and

WHEREAS, as an environmental leader among local governments in the State of Florida, the goal of the City is to replace single-use carry out plastic bags with reusable, recyclable, or compostable alternatives whenever possible; and

WHEREAS, the City Commission finds that this Ordinance is necessary for the preservation of the City's environment and the public health, safety and welfare of City residents and visitors and future generations; and

WHEREAS, in Florida Retail Federation, Inc. and Super Progreso Inc. v. The City of Coral Gables, in the Circuit Court of the Eleventh Judicial Circuit for Miami-Dade County, Florida (Case No. 2016-018370-CA-01), the Court held that Sections 403.708(9) and 403.7033 of the Florida Statutes, relating to packaging and plastic bags, are unconstitutional. The Plaintiffs appealed the trial court ruling, and the case is currently pending before the Third District Court of Appeal; and

WHEREAS, on July 26, 2017, the Mayor and City Commission adopted Ordinance No. 2017-4117, amending Chapter 82 of the City Code, entitled "Public Property," to create a definition for "single-use carry out plastic bag," and to create Section 82-385(z), which provides that, at sidewalk cafes, single-use carry out plastic bags shall not be allowed on the right-of-way and shall not be provided to sidewalk cafe patrons. The provisions in Section 82-385(z), and the definition of "single-use carry out plastic bag," would only take effect upon the issuance of a final mandate by the Third District Court of Appeal or the Florida Supreme Court which upholds the unconstitutionality of Section 403.7033, Florida Statutes; and

WHEREAS, this Ordinance modifies the circumstances under which City Code Section 82-385(z), relating to single-use carry out plastic bags, would take effect.

NOW, THEREFORE, BE IT DULY ORDAINED BY THE MAYOR AND CITY COMMISSION OF THE CITY OF MIAMI BEACH, FLORIDA, AS FOLLOWS:

SECTION 1. Division 5, entitled "Sidewalk Cafes," of Article IV, entitled "Uses in Public Rights-of-Way," of Chapter 82, entitled "Public Property," of the Miami Beach City Code, is hereby amended as set forth below. The definition in Section 82-366 is provided for reference purposes.

**CHAPTER 82
PUBLIC PROPERTY**

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Article IV. Uses in Public Rights-of-Way

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Division 5. Sidewalk Cafes

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Subdivision I. Generally

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Sec. 82-366. Definitions.

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Single-use carry out plastic bag means a bag provided by a sidewalk cafe permittee to a sidewalk cafe patron, for the purpose of transporting purchases or goods, including, but not

limited to, food and beverages, which is made predominantly of plastic derived from petroleum or a biologically-based source. A single-use carry out plastic bag does not include a compostable carry out bag that:

- (1) Conforms to current ASTM D6400 standards;
- (2) Is certified and labeled as meeting ASTM D6400 standard specifications by a recognized verification entity; and
- (3) Must be capable of undergoing biological decomposition in a compost site such that the material breaks down into carbon dioxide, water, inorganic compounds, and biomass at a rate consistent with known compostable materials.

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Subdivision II. Permit

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Sec. 82-385. Minimum standards, criteria, and conditions for operation of sidewalk cafes.

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- (z) Single-use carry out plastic bags shall not be allowed on the right-of-way and shall not be provided to sidewalk cafe patrons. The provisions in this subsection (z), and the definition of single-use carry out plastic bag in section 82-366, shall only take effect upon the issuance of a final mandate from following an opinion from the Third District Court of Appeal or, if appealed to the Florida Supreme Court, the issuance of a final mandate from the Florida Supreme Court, regarding the opinion final judgment rendered in Florida Retail Federation Inc. and Super Progreso, Inc. v. The City of Coral Gables, in the Circuit Court of the Eleventh Judicial Circuit for Miami-Dade County, Florida (Case No. 2016-018370-CA-01), which final mandate Third District Court of Appeal opinion upholds the unconstitutionality of F.S. § Section 403.7033, Florida Statutes. Notwithstanding the above, the provisions in this subsection (z), and the definition of single-use carry out plastic bag in section 82-366, shall automatically sunset if an appeal is filed with the Florida Supreme Court, and the Florida Supreme Court upholds Section 403.7033, Florida Statutes, as constitutional, or as otherwise valid.

SECTION 2. REPEALER.

All ordinances or parts of ordinances in conflict herewith are hereby repealed.

SECTION 3. SEVERABILITY.

If any section, subsection, clause or provision of this Ordinance is held invalid, the remainder shall not be affected by such invalidity.

SECTION 4. CODIFICATION.

It is the intention of the Mayor and City Commission of the City of Miami Beach, and it is hereby ordained that the provisions of this ordinance shall become and be made part of the Miami Beach City Code. The sections of this ordinance may be renumbered or relettered to accomplish such intention, and the word "ordinance" may be changed to "section," "article," or other appropriate word.

SECTION 5. EFFECTIVE DATE.

This Ordinance shall take effect on the ____ day of _____, 2018.

PASSED and **ADOPTED** this ____ day of _____, 2018.

ATTEST:

Rafael E. Granado
City Clerk

Dan Gelber
Mayor

Underline denotes additions
~~Strikethrough~~ denotes deletions

(Sponsored by Mayor Dan Gelber)

APPROVED AS TO
FORM & LANGUAGE
& FOR EXECUTION
22 Oct 5/30/18

City Attorney Date
NK